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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,222	01/28/2004	Rodney G. Schneidmiller	STIL122198	2582

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EXAMINER

LOFDAHL, JORDAN M

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



## Office Action Summary

Application No.

10/767,222

Applicant(s)

SCHNEIDMILLER, RODNEY G.

Examiner

Jordan Lofdahl

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-7,11,19-22 and 27-33 is/are pending in the application.
- 4a) Of the above claim(s) 3, 4, 8-10, 12-18 and 23-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-7,11,19-22,27-29 and 33 is/are rejected.
- 7) ☒ Claim(s) 30-32 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 3, 4, 8-10, 12-18 and 23-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 12/27/04.

Applicant's election with traverse of election of subspecies 6A and Subspecies 1B in the reply filed on 12/27/04 is acknowledged. The traversal is on the ground(s) that the search of all the species would not impose undue burden to the examiner. This is not found persuasive because to search all variety of embodiments of the whisker orientation and whisker materials would cause an extensive search is deemed a burden to the examiner

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1, 2, 5-7, 11, 19-22 and 27-29 and 33 are rejected under 35

U.S.C. 103(a) as being unpatentable over Mah (6134826) and further in view of Wilson (6158165).

As to claims 1 and 33, Mah discloses a container having a volume with a first opening (fig. 2); a light assembly (21) and an attractant (47). Not disclosed is a chemical attractant. Wilson, however, discloses a bait made of chemicals (17). It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the device of Mah with an additional attractant of Wilson to create another means to attract insects to the device. Mah discloses a funnel that ensure insects do not escape the trap. Not disclosed is a device, as modified, comprising a whisker assembly that ensured insects do not escape the trap. Wilson, however, discloses a whisker assembly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute funnel aperture of the device, as modified, of Mah, with the whisker assembly of Wilson to create a more reliable one way gate means to ensure insects do not escape the trap. The solid funnel of Mah and the whisker funnel of Wilson are read as art recognized equivalents.

As to claim 2, disclosed are strands formed of a luminous material (read as being able to reflect light).

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As to claim 5, not disclosed are the strands made of the list of materials as disclosed in the instant claim. It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the device, as modified, of Mah with strands made of the list of materials as disclosed in the instant claim; since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

As to claim 6, not disclosed are the strands having an average diameter in the range of 0.05 mm to about 2.00 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the strands with an average diameter in the range of 0.05 mm to about 2.00 mm; since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

As to claim 7, disclosed is the base end, larger than the tip end.

As to claim 11, not disclosed are the strands of length in the range of 13mm to about 150mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the lengths of the strand in the range of 13mm to about 150mm; since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

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As to claim 19, disclosed is an upper end (19); the volume (29) being disposed opposite the upper end and the first opening being located between the upper end and the volume.

As to claim 20, not disclosed are separable top and bottom portions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the device with separable top and bottom portions, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art.

As to claim 21, disclosed is a generally ovoid shape.

As to claim 22, disclosed is the bulb (21) near the opening. Not disclosed is the bulb within a distance of approximately 155mm or less. It would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the bulb within a distance of approximately 155mm or less of the opening; since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

As to claim 27, not disclosed is a light emitting diode that emits light having a frequency in the range of about 80 to about 565 nanometers. Disclosed is the light source capable

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of being changed to optimally attract certain pests. It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the device of Mah with a LED, having a frequency in the range of about 80 to about 565 nanometers to create a means to attract certain pests.

As to claim 28, not disclosed is a light emitting diode that emits blue light. Disclosed is the light source capable of being changed to optimally attract certain pests. It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the device of Mah with a blue LED, to create a means to attract certain pests.

As to claim 29, not disclosed is a photosensitive device. It would have been obvious to one having ordinary skill in the art at the time was made to comprise the device, as modified, with a photosensitive device; since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art.

### ***Allowable Subject Matter***

Claims 30-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jordan Lofdahl whose telephone number is 703.605.1217. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703.305.7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jml

  
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